

## **REMARKS**

Claims 1-9, 11-20, 22-24, and 26-28 are presently pending in the case. Claims 1, 15, and 22 have been amended and claims 10, 21, and 25 have been cancelled. The amendments and cancellations are made without prejudice or disclaimer, Applicant reserving the right to pursue the previously pending claims in a continuing application. The amendments are supported by the specification and claims as originally filed.

Reconsideration of the present case in view of the above amendments and the remarks herein is requested.

### **Amendment to the specification**

The specification was objected to by the Examiner because of informalities on page 7. Applicant has amended the specification as suggested by the Examiner and requests withdrawal of the objection.

### **Drawing Objections**

The Drawings were objected to. Replacement drawing sheets in compliance with 37 CFR 1.121(d) are included.

### **Claim rejections under 35 USC 102**

The Examiner rejected claims 1-10 and 15-25 under 35 USC 102(b) as being anticipated by U.S. Patent 4,069,819 to Valentini et al (hereinafter Valentini et al). The rejection is traversed.

Valentini et al does not anticipate claims 1-10 and 15-25. To sustain a section 102 rejection, the reference relied upon, must disclose each and every element of the claimed invention. Non-disclosure of a single element of the claim negates anticipation. Claim 1, for example, is to an aerosolization apparatus comprising, inter alia, a body defining a chamber having an air inlet wherein the air inlet is oriented to cause air to swirl within the chamber and wherein the chamber comprises a cross-section orthogonal to its longitudinal axis that is non-

circular. Valentini et al does not disclose both of these features. Accordingly, Valentini et al does not anticipate claim 1. Thus, the Examiner is respectfully requested to reconsider the language of claim 1 and withdraw the rejection thereunder.

The Examiner points to column 1 lines 27-35 to support the contention that Valentini et al discloses a non-circular cross sectioned chamber, but this recitation does not render claim 1 anticipated. Valentini et al states: “The passageway for the air is made in such manner as to set the air itself in vertical motion. This may be achieved either by means of holes or passageways suitably oriented, or by means of other elements such as inclined surfaces, helicoidal parts or the like” (emphasis added). The Examiner goes on to posit that the inclined surfaces, helicoidal parts or the like would result in a non-circular cross section. However, there is no indication that the “inclined surfaces, helicoidal parts or the like” would be located in the chamber. Furthermore, since claim 1 recites “the air inlet is oriented to cause air to swirl within the chamber” there would be no “inclined surfaces, helicoidal parts or the like”. For at least these reasons, Valentini et al does not anticipate claim 1.

Independent claims 15 and 22 also recite an oriented inlet and a non-circular chamber. Therefore, claims 15 and 22 are not anticipated by Valentini et al either. Claims 2-9, 11-14, 16-20, 23, and 24 depend from one of claims 1, 15 or 22 and are also allowable over Valentini et al.

Claim 26 is also not anticipated by Valentini et al. Claim 26 is to a method of aerosolizing a pharmaceutical formulation, the method comprising, inter alia, inserting a receptacle into a chamber having a non-circular cross section; and inhaling through an opening in the housing to cause air to flow into the chamber thereby causing the receptacle to move about the non-circular cross section. Valentini et al does not disclose a non-circular cross-section about which a receptacle moves. The Examiner points to column 1 lines 27-35 to support the contention that Valentini et al discloses a non-circular cross sectioned chamber, but this recitation does not render claim 1 anticipated. Valentini et al does not state that the “inclined surfaces, helicoidal parts or the like” would be positioned at a location about which the receptacle moves. Accordingly, Valentini et al does not anticipate the claim. Claims 27 and 28 depend from claim 26 and are also not anticipated by Valentini et al.

### **Claim rejections under 35 USC 103(a)**

The Examiner rejected claims 11-14 and 26-28 under 35 USC 103(a) as being unpatentable over Valentini et al. The rejection is traversed.

The Examiner properly points out that Valentini et al “does not disclose the non-circular cross-section comprising one or more projections that extend into the chamber” (Office Action page 6). Valentini et al also does not suggest such projections and the Examiner has provided no other suggestion for the projections. Therefore, there is no motivation for one of ordinary skill in the art to modify Valentini et al in a manner which would arrive at Applicant’s invention. Thus, Valentini et al does not render claims 11-14 and 26-28 unpatentable. (Note that claim 26 is not limited to “projections” but is patentable over Valentini et al as discussed above).

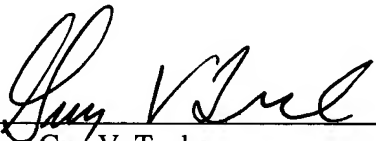
## Conclusion

The claims are allowable for the reasons given above. Thus, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

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